

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

AMANDA MCVETY,

PLAINTIFF,

v.

BANK OF AMERICA CORPORATION,

DEFENDANT,

AND

HERTZ GLOBAL HOLDINGS, INC.

NOMINAL DEFENDANT,

13 Civ. 5104 (PAE)

ECF Case

**COMPLAINT FOR RECOVERY  
OF SHORT-SWING PROFITS  
UNDER 15 U.S.C. § 78p(b)**

**JURY TRIAL DEMANDED**

Plaintiff Amanda McVety (“Plaintiff”), by her attorney, as and for her complaint herein, respectfully alleges as follows on knowledge as to herself and her own acts and on information and belief as to all other matters:

**NATURE OF ACTION**

1. This is an action to recover “short-swing” profits under Section 16(b) of the Securities Exchange Act of 1934, as amended (the “Act”), 15 U.S.C. § 78p(b).

2. Section 16(b) is a strict liability statute. A plaintiff must prove only that the defendant was an insider of a public company who profited from the purchase and sale of the company’s stock or derivative securities within a period of less than six months. Evidence of the defendant’s intent, misuse of information, or bad faith is irrelevant and not required. Section 16(b) is not punitive and insiders are simply required to disgorge profits realized in violation of the Act.

3. Congress found Section 16(b)'s sweeping scope to be a necessary prophylactic to deter the misuse of information by the insiders of America's public companies.

4. Defendant Bank of America Corporation ("Bank of America") was an insider of Nominal Defendant Hertz Global Holdings, Inc. ("Hertz") who profited from purchases and sales of Hertz stock that occurred within a six-month period. The Statements of Changes in Beneficial Ownership ("Form 4s") that Bank of America filed with the United States Securities and Exchange Commission during the relevant time period establish as much.

5. As a result, Bank of America has engaged in precisely the conduct that the Act prohibits and it must return to Hertz its unlawfully realized profits.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to Section 27 of the Act, 15 U.S.C. § 78aa.

7. Venue is proper in this Court pursuant to Section 27 of the Act, 15 U.S.C. § 78aa. Defendant Bank of America is found and does business in this District, a substantial part of the events or transactions giving rise to the claims herein occurred in this District and many of the documents, records, and witnesses related to this action are located in this District.

**THE PARTIES**

8. Plaintiff Amanda McVety is an individual residing in Ohio. She is a shareholder of Hertz.

9. Defendant Bank of America is a Delaware corporation headquartered at Bank of America Center, 401 North Tryon Street, Charlotte, North Carolina 28255, with offices and branches in New York, New York.

10. Nominal Defendant Hertz is a Delaware corporation headquartered at 225 Brae Boulevard, Park Ridge, New Jersey 07656. At all times relevant to this Complaint, the common stock of Hertz was registered under Section 12 of the Act and was and is traded on the New York Stock Exchange (as HTZ), which is located within this District.

11. This action is brought in the right and for the benefit of Hertz, which is named as a nominal defendant solely in order to have all necessary parties before the Court.

#### **FACTUAL BACKGROUND**

12. As indicated on its Form 4s, Bank of America was an insider (specifically, a director by deputation) of Hertz at all times relevant to the Complaint.

13. On March 13, 2013, Bank of America purchased 4,300 shares of Hertz common stock at \$21.633.

14. Approximately two months later, on May 9, 2013, Bank of America sold 6,626,886 shares at \$24.715 per share.

15. The May 9, 2013 sale of shares at \$24.715 per share can be matched against the March 13 purchase of shares at \$21.633 per shares.

16. The total short-swing profit is \$13,252.60.

17. On May 15, 2013, Plaintiff made a demand upon Hertz that it require Bank of America to disgorge the short-swing profits. Hertz declined to pursue the claims asserted therein, which are identical to the claims asserted here.

18. Because sixty days have passed since the demand was made, and because Hertz has declined to pursue this claim, Plaintiff brings the claim on Hertz's behalf.

**COUNTS**

**FIRST CAUSE OF ACTION**  
**For Violations of Section 16(b) of the Securities Exchange Act**

19. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 18, above, as though fully set forth herein.

20. At all relevant times, Plaintiff was a shareholder of Hertz.

21. At all relevant times, Bank of America was a director of Hertz, and at certain times a 10% beneficial owner of Hertz's common stock.

22. Under Section 16(b), the purchase and sale transactions by Bank of America disclosed in Bank of America's Form 4s are matchable and yield short-swing profits of at least \$13,252.60, which must be disgorged to Hertz as required by Section 16(b).

23. Plaintiff brought these violations to Hertz's attention. More than sixty days have passed since delivery of the demand letter, and Hertz has declined to pursue the claim.

24. Bank of America may have made additional purchases and sales of Hertz common stock that may have resulted in additional unlawful profits of which Plaintiff is currently aware. Those profits must also be disgorged to Hertz.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury as to all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment:

- (a) requiring Defendant Bank of America to account for and pay to Hertz the short-swing profits recoverable from it under the Act, together with appropriate pre- and post-judgment interest and costs of this suit;
- (b) awarding to Plaintiff her costs and disbursements including reasonable attorney's, accountant's, and expert witness fees; and
- (c) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
July 22, 2013

  
By: Joshua L. Seifert  
Joshua L. Seifert PLLC  
40 Worth Street, 10th Floor  
New York, NY 10013  
Telephone: 646.527.7366  
Email: [jseifert@seifertpllc.com](mailto:jseifert@seifertpllc.com)  
*Attorney for Amanda McVety*